

EXHIBIT 1

HONORABLE FRANKLIN D. BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TODD and ANNE ERICKSON, individually and
the marital community comprised thereof,

Plaintiffs,

v.

MICROAIRE SURGICAL INSTRUMENTS,
LLC, a Virginia Limited Liability Company doing
business in the State of Washington,

Defendant.

NO. C08-5745-FDB

PLAINTIFFS' FIRST REQUESTS FOR
ADMISSION WITH DEFENDANT'S
RESPONSES THERETO

TO: Todd and Anne Erickson, Plaintiffs
AND TO: Tony Shapiro and Marty McLean, Attorneys for Plaintiffs
COMES NOW Defendant MicroAire Surgical Instruments, LLC ("MicroAire") and
submits its responses to Plaintiffs' First Requests for Admission as follows:

General Objections

These objections apply generally to all of the discovery requests.

Objection to Scope of Discovery Requests

Without limiting the generality of this objection, MicroAire objects to all discovery requests to
the extent that they (1) go beyond the scope of discovery provided by the applicable Civil and
Local Rules, or (2) are not reasonably calculated to lead to the discovery of admissible evidence.

{EHG780110.DOC;1\12459.000005\}

PLAINTIFFS' FIRST REQUESTS FOR ADMISSION WITH
RESPONSES THERETO - 1

OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

Privileged and Trial Preparation Materials

MicroAire objects to all discovery requests to the extent they call for information or documents that fall within any relevant privilege, including the attorney/client privilege or the work product doctrine, or which constitute trial preparation materials within the meaning of the Civil and Local Rules.

No Waiver

Nothing set forth in MicroAire's specific objection is intended as or should be construed as a waiver of the above general objections, or of any other specific objection set forth.

II. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that John Pascaloff was the representative designated by MicroAire Surgical Instruments, LLC ("MicroAire") to appear in response to plaintiff's Second Amended Notice of 30(b)(6) Deposition.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 2: Admit that John Pascaloff was the only representative designated by MicroAire to appear in response to plaintiff's Second Amended Notice of 30(b)(6) Deposition.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 3: Admit that John Pascaloff is the Director of Engineering for MicroAire.

1 RESPONSE:

2 Objection. This request is vague as to timeframe. Notwithstanding and subject to these
3 objections, MicroAire responds as follows: Deny. Mr. Pascaloff's current title is "Engineering
4 Group Director."
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8 REQUEST FOR ADMISSION NO. 4: Admit that John Pascaloff has been the Director of
9 Engineering for MicroAire since at least 2001.
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11 RESPONSE:

12 Deny. Admit that Mr. Pascaloff has been the Engineering Group Director since at least
13 2001.
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17 REQUEST FOR ADMISSION NO. 5: Admit that since 1997, John Pascaloff was the primary
18 signatory on all fault tree analysis conducted for power instruments manufactured by MicroAire.

19 RESPONSE:

20 Objection. The terms "primary" and "power instruments" are undefined and ambiguous.
21 Notwithstanding and subject to these objections, MicroAire responds as follows: Deny Mr.
22 Pascaloff was the primary signatory on all fault tree analyses conducted for power instruments
23 manufactured by MicroAire. Since approximately 1997, Mr. Pascaloff served as a signatory on
24 fault tree analyses for the MicroAire 2910 pneumatic drill. Other persons also served as
25 signatories, including representatives from the marketing and quality assurance departments.
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1 Additionally, other engineers served as signatories.
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4 REQUEST FOR ADMISSION NO. 6: Admit that the MicroAire 2910-100 is a power
5 instrument.
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7 RESPONSE:

8 Objection. The term "power instrument" is undefined and vague. Notwithstanding and
9 subject to these objections, MicroAire responds as follows: Admit that the MicroAire 2910-100
10 is a pneumatic power instrument.
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13 REQUEST FOR ADMISSION NO. 7: Admit that the only risk identified by John Pascaloff
14 arising from improper cleaning of the MicroAire 2910-100 was that the burr may become
15 overheated.

16 RESPONSE:

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18 Objection. This request is vague and ambiguous. Notwithstanding and subject to these
19 objections, MicroAire responds as follows: Deny that an overheating burr is the only risk
20 associated with improper cleaning and/or maintenance. Improper cleaning and/or maintenance
21 may cause performance problems. Improper maintenance, including, but not limited to, third
22 party repairs, may change the decibel level.
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25 REQUEST FOR ADMISSION NO. 8: Admit that there is no record of MicroAire analyzing the
26

1 risk of excessive noise being generated by the MicroAire 2910-100 surgical drill prior to the
2 commencement of this lawsuit.

3 RESPONSE:

4 Objection. The term "excessive noise" is vague and undefined. Notwithstanding and
5 subject to these objections, MicroAire responds as follows: Admit. Deny noise excessive, given
6 the decibel level and duration of use. Deny recorded analysis necessary, given the decibel level
7 and duration of use.
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10 REQUEST FOR ADMISSION NO. 9: Admit that there is no record of MicroAire analyzing
11 whether the noise generated by the MicroAire 2910-100 surgical drill complied with applicable
12 OSHA standards prior to commencement of this lawsuit.
13

14 RESPONSE:

15 Objection. This request is vague and ambiguous, as it does not identify which "OSHA
16 standards" plaintiffs deem "applicable." Notwithstanding and subject to these objections,
17 MicroAire responds as follows: Admit. Deny recorded analysis necessary, given the decibel
18 level and duration of use.
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21 REQUEST FOR ADMISSION NO. 10: Admit that MicroAire did not document whether
22 customers registered complaints regarding noise levels generated by its surgical drills prior to
23 commencement of this lawsuit.

24 RESPONSE:

25 Objection. The term "surgical drills" is undefined and vague. The MicroAire 2910
26 pneumatic drill is the only "surgical drill" relevant to this litigation. Notwithstanding and subject

1 to these objections, MicroAire responds as follows: Deny.

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4 REQUEST FOR ADMISSION NO. 11: Admit that MicroAire did not provide consumers with
5 any warnings that the 2910-100 surgical drill may generate excessive noise levels.

6 RESPONSE:

7 Objection. The term "excessive noise levels" is vague and undefined. Notwithstanding
8 and subject to these objections, MicroAire responds as follows: Deny noise levels were
9 excessive. Deny MicroAire had notice of "excessive noise levels." Deny MicroAire had a duty
10 to warn of an alleged risk of which it had no notice. Admit warnings did not address noise
11 levels. Deny such warnings were necessary, given the decibel level and duration of use.
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14 REQUEST FOR ADMISSION NO. 12: Admit that MicroAire did not provide consumers with
15 any warnings that the 2910-100 surgical drill may cause noise induced hearing loss.
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17 RESPONSE:

18 Objection. The term "noise induced hearing loss" is vague and undefined.
19 Notwithstanding and subject to these objections, MicroAire responds as follows: Deny
20 MicroAire had notice of possible noise induced hearing loss. Deny MicroAire had a duty to warn
21 of an alleged risk of which it had no notice. Deny that the 2910-100 pneumatic drill caused noise
22 induced hearing loss. Admit warnings did not address possibility of noise induced hearing loss.
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26 REQUEST FOR ADMISSION NO. 13: Admit that the instructional manual(s) provided with the

1 MicroAire 2910-100 surgical drill did not inform consumers to utilize hearing protection while
2 operating the product.

3 RESPONSE:

4 Deny MicroAire had notice of possible noise induced hearing loss. Deny MicroAire had
5 a duty to warn of an alleged risk of which it had no notice. Deny that the 2910-100 pneumatic
6 drill caused noise induced hearing loss. Admit warnings did not address hearing protection.
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10 REQUEST FOR ADMISSION NO. 14: Admit that the instructional manual(s) provided with the
11 MicroAire 2910-100 surgical drill did not instruct consumers that the product may cause noise
12 induced hearing loss.
13

14 RESPONSE:

15 Objection. The term "noise induced hearing loss" is vague and undefined.
16 Notwithstanding and subject to these objections, MicroAire responds as follows: Deny
17 MicroAire had notice of possible noise induced hearing loss. Deny MicroAire had a duty to warn
18 of an alleged risk of which it had no notice. Deny that the 2910-100 pneumatic drill caused noise
19 induced hearing loss. Admit instruction manual did not address alleged noise induced hearing
20 loss.
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24 REQUEST FOR ADMISSION NO. 15: Admit that oral maxillofacial surgeons were the target
25 purchasers for the MicroAire 2910-100 surgical drill.
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1 RESPONSE:

2 Admit.

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4 REQUEST FOR ADMISSION NO. 16: Admit that prior to working for MicroAire, John
5 Pascaloff was the product development manager for Hall.
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7 RESPONSE:

8 Admit that prior to his employment at MicroAire, Mr. Pascaloff worked at Hall as a
9 Manager of Product Development.
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11 REQUEST FOR ADMISSION NO. 17: Admit that while employed by Hall, John Pascaloff's
12 job duties included the development of new Hall/ConMed Linvatec ("Hall") surgical
13 instruments.
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15 RESPONSE:

16 Deny that Mr. Pascaloff was employed by ConMed Linvatec. Admit he was employed by
17 Hall. Admit his job duties included supporting the development of new Hall surgical
18 instruments.
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21 REQUEST FOR ADMISSION NO. 18: Admit that John Pascaloff identified Hall's Surgairtome
22 Two as a competitive product to MicroAire's 2910-100 surgical drill prior to the 2910-100 being
23 discontinued.
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25 RESPONSE:

26 Admit.

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3 REQUEST FOR ADMISSION NO. 19: Admit that the MicroAire's 2910-100 surgical drill did
4 not utilize a noise muffling system.

5 RESPONSE:

6 Objection. The term "noise muffling system" is vague and undefined. Notwithstanding
7 and subject to these objections, MicroAire responds as follows: Deny.
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10 REQUEST FOR ADMISSION NO. 20: Admit that the MicroAire's 2910-100 surgical drill did
11 not contain component parts designed to lessen noise.

12 RESPONSE:

13 Objection. The term "lessen noise" is vague and undefined. Notwithstanding and subject
14 to these objections, MicroAire responds as follows: Deny.
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17 REQUEST FOR ADMISSION NO. 21: Admit that while Pascaloff was employed by Hall, the
18 Surgairtome Two surgical drill utilized an exhaust muffling device.

19 RESPONSE:

20 Admit that the Surgairtome Two surgical drill utilized a device labeled as a "muffler"
21 during Mr. Pascaloff's employment at Hall. Deny that this device functioned as a muffler to
22 lessen noise.
23

1 REQUEST FOR ADMISSION NO. 22: Admit that, while employed by Hall, John Pascaloff
2 signed off on the engineering design drawings for the exhaust muffling component of the
3 Surgairtome Two surgical drill.

4 RESPONSE:

5 Admit that Mr. Pascaloff signed engineering drawings for a component labeled as a
6 "muffler" while employed by Hall. Deny that this device functioned as a muffler to lessen noise.
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10 REQUEST FOR ADMISSION NO. 23: Admit that, according to John Pascaloff, one of the
11 purposes of the exhaust muffling device utilized by Hall on its Surgairtome Two surgical drill
12 was to lessen noise.

13 RESPONSE:

14 Objection. This request is vague and ambiguous. Notwithstanding and subject to these
15 objections, MicroAire responds as follows: Deny.
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18

19 DATED this 7th day of April, 2010.

20 OGDEN MURPHY WALLACE, PLLC
21

22 By Emily Harris Gant
23 Lee Corkrum, WSBA No. 6585
24 Emily Harris Gant, WSBA No. 35679
25 1601 Fifth Avenue, Suite 2100
26 Seattle, Washington 98101
Tel.: (206) 447-7000
Fax: (206) 447-0215
egant@omwlaw.com
Attorneys for Defendant

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PLAINTIFFS' FIRST REQUESTS FOR ADMISSION WITH
RESPONSES THERETO - 10

OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

VERIFICATION

STATE OF _____)
COUNTY OF _____) ss.

I, _____, certify under penalty of perjury under the laws of the
State of _____ that the foregoing answers and responses are true and correct.

DATED this ____ day of April, 2010.

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2010.

NOTARY PUBLIC in and for the State of _____, residing at _____.

My commission expires: _____.

DECLARATION OF SERVICE

I hereby declare that I sent a copy of the document on
which this declaration appears via fax/mail/messenger
service to _____.

I declare under penalty of perjury of the laws of the
State of Washington that the foregoing is true and correct.

Executed at Seattle, WA on 4/27/10

Signed by: _____

VERIFICATION

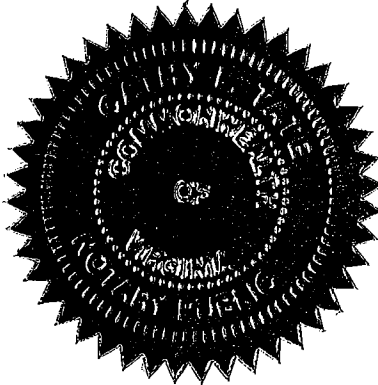
STATE OF Virginia }
 COUNTY OF Albemarle } ss.

I, Chris Spofford, certify under penalty of perjury under the laws of the State of Virginia that the foregoing answers and responses are true and correct.

DATED this 7 day of April, 2010.

[Signature]

SUBSCRIBED AND SWORD TO before me this 8th day of April, 2010.



Cathy L. Tate Id# 3600002
 NOTARY PUBLIC in and for the State of
Albemarle, residing at
 My commission expires: Feb 28, 2013.

DECLARATION OF SERVICE

I hereby declare that I sent a copy of the document on which this declaration appears via fax/mail/messenger service to [Signature]

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.
 Executed at Seattle, WA on 4/7/10
 Signed by: [Signature]

EXHIBIT 2



HAGENS BERMAN

ATTORNEYS AT LAW

Marty D. McLean
Attorney
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 EIGHTH AVENUE, SUITE 3300
SEATTLE, WA 98101
www.hbsslaw.com
Direct (206) 268-9359
Direct Fax (206) 623-0592
martym@hbsslaw.com

April 9, 2010

VIA EMAIL & U.S. MAIL

Ms. Emily Harris Gant
Ogden Murphy Wallace PLLC
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101

Re: *Erickson v. MicroAire*
Deficient Discovery Responses

Ms. Gant:

During our discovery conference earlier today, we agreed to provide our concerns regarding your client's responses to our requests for admission. You agreed to review our concerns and your client's answers, and to reconvene our discovery conference on Monday, April 12, 2010.

As explained during our call, our requests were carefully worded based upon testimony provided by MicroAire's 30(b)(6) witness, John Pascaloff. Your client has not offered any changes to Mr. Pascaloff's testimony as required by Civil Rule 30(e). This 30(b)(6) testimony is now binding on your client.

Inexplicably, your client failed to fully answer all but five of the twenty-three requests for admissions we served. The remaining responses contain inappropriate objections or denials that are contradicted by Mr. Pascaloff's testimony.

As one example, when asked to admit that the *only* problem resulting from improper cleaning of the MicroAire 2910-100 drill was that it could become overheated, your client made several inappropriate objections and offered a general denial. However, during Mr. Pascaloff's deposition, he testified as follows:

Q. You said one of the problems with the 2910-100 was a cleaning problem?

A. Yes.

Ms. Emily Harris Gant
April 9, 2010
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Q. Explain that to me.

A. The cleaning procedure is well specified in the instructions for use. One of the primary things that make it -- to get the instrument, the nose clean is to remove the burr guard, which unscrews. It is spelled out. The trouble is nobody ever did that, so a lot of debris would remain in the collet and would, over time, with sterilization, would not get flushed out, and it would cause issues with heat in the nose or the burrs not to be able to be inserted.

Q. *Okay. So, just so I understand it, if people didn't clean the nose correctly, the risk was the burr would get overheated and the patient might get burnt?*

A. *That's correct.*

Q. All right. *Any other risks associated with not cleaning the instrument properly?*

A. *That's it. That is the risk.*

Several of your client's other responses are likewise inappropriate and dissembling. Your client repeatedly offers objections and denials that are contradicted by Mr. Pascaloff's sworn testimony.¹ Please be prepared to discuss each of these responses during our discovery conference.

You have an obligation pursuant to Civil Rule 26(g) to verify that your objections and answers are well-founded based upon existing law or facts. Your requests for admissions responses satisfy neither requirement.

We would prefer that your client agree to revisit its requests for admissions responses voluntarily. However, we are prepared to bring the current inadequacies to the Court's attention, should your client stand by its current responses.

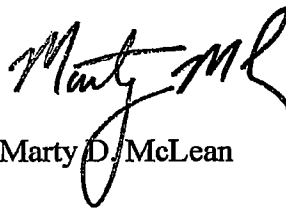
¹ See Response Nos. 3 – 14; 19-23.

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We will phone your office on Monday, April 12, 2010, at 3:30 p.m. to conduct our formal discovery conference.

Respectfully,

HAGENS BERMAN SOBOL SHAPIRO LLP

A handwritten signature in black ink, appearing to read "Marty ML", with a stylized flourish at the end.

Marty D. McLean

MDM:hs